COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 230 OF 2025 & IA No. 1139 OF 2025

Dated: 9th December, 2025

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Mr. Ajay Talegaonkar, Technical Member (Electricity)

In the matter of:

Kundan Green Energy Private Limited .... Appellant(s)

Versus

Bihar Electricity Regulatory Commission & Ors. .... Respondent(s)

Counsel on record for the Appellant(s) : Deepak Khurana
Vineet Tayal
Abhishek Bansal
Nishtha Wadhwa
Bhaskar
Monalika Chaudhary
for App. 1

Counsel on record for the Respondent(s) : Ravi Kishore
for Res. 1

Rohini Prasad
for Res. 2

Rohini Prasad
for Res. 3

Rohini Prasad
for Res. 4

Rohini Prasad
for Res. 5

ORDER

IA No. 1139 of 2025
(for interim relief)

This appeal is filed against the order passed by the BERC in Case No. 03/2025 dated 19.06.2025 whereby the L-1 bid, quoted by the

Appellant for 15 locations under the PM Kusum Scheme, was rejected on the ground that the tariff quoted by them was not market aligned.

IA No. 1139 of 2025 is filed seeking ad interim ex parte injunction restraining the Respondent from re-tendering the process of procurement of power wherein the L-1 rate offered by the solar power developers (like the Appellant herein) is more than Rs. 3.48 per kilowatt hour during the pendency and final outcome of the present appellate proceedings.

Initially bids were invited by the nodal agency, i.e. the Bihar State Power Generation Company Ltd., for installation of solar panels for a capacity of 800 MWs at 843 locations. Bids were received and approval of the Commission was sought for 112.07 MWs with respect to 58 power sub-stations. The Commission, however, approved the discovered tariff, for 17.68 MWs with respect to 6 power sub-stations at a tariff ranging between Rs. 3.20 to Rs. 3.48 per unit. The approval so granted by the Commission was by way of its order in Case No. 24/2024 dated 23.10.2024. Thereafter, the subject tender was issued by the nodal agency inviting bids for 610 MWs at 1121 power sub-stations. In the subject bid, all single bids were rejected and, among those locations where multiple bids were received, the Appellant was L-1 in 15 locations quoting a tariff ranging between Rs. 3.79 to Rs. 4.15 per unit. The nodal agency filed a petition before the BERC seeking its approval of the discovered tariff for 393.81 MWs.

The BERC, however, compared the tariff quoted under the very same PM Kusum Scheme in six other States, as well as the bids received in the State of Bihar in the earlier rounds of bidding, and observed that the approved tariff therein ranged between Rs. 2.77 to Rs. 3.48 per unit. Consequently, the bid submitted by the Appellant as L-1, which was higher than Rs. 3.48 per unit, stood rejected.

Among the contentions, urged on behalf of the Appellant by Mr. Buddy Ranganadhan, Learned Senior Counsel, is that the Appellant was ready and willing to match the bid of Rs. 3.48 per unit which was accepted for other locations in the very same bid process; and this contention, urged on behalf of the Appellant, was not even considered by the BERC while refusing to grant approval to the L-1 bid quoted by the Appellant. It does not appear to be in dispute that the Appellant's request that they be permitted to match the bid, received with respect to other power sub-stations of Rs. 3.48 per unit, was not even considered much less dealt with in the Impugned Order.

While Mr. Buddy Ranganadhan, Learned Senior Counsel appearing on behalf of the Appellant, would submit, relying on the press release dated 23.12.2023, that a total of 1,60,000 pump sets in the State of Bihar were brought under the PM Kusum Scheme, Ms. Rohini Prasad, Learned Counsel appearing on behalf of the Bihar-Discoms (R-2 to R-5), would submit that, eventually, what was sanctioned under the PM Kusum Scheme was for 90,000 pump sets; 71,100 pump sets were consumed in the first two rounds of bidding leaving 18,900 pump sets remaining to be tendered; consequently, the 3rd round of invitation of bids commenced on 11.03.2025, the BERC, by its order in Case No. 46 of 2025 dated 11.11.2025, approved the tariff for 60.24 MWs covering 18,900 pump sets at a tariff ranging between Rs. 3.20 to Rs. 3.30 per unit; execution of PPAs for these 18,900 pump sets is underway; additionally the Govt of India sanctioned 50,300 pump sets under the same PM Kusum Scheme and, by order in Case No. 55 of 2025 dated 02.12.2025, the BERC approved a tariff, for these 50,300 pump sets, ranging between Rs. 3.30 and Rs. 3.48 per unit; the tariff quoted by the Appellant was for a higher MW capacity; and, ordinarily, the higher the capacity, the lower the tariff which is quoted.

Mr. Buddy Ranganadhan, Learned Senior Counsel appearing on behalf of the Appellant, would submit that the Commission has erred in comparing the tariff, quoted in the bids received in the State of Bihar, with other States without considering the fact that the power generated by the Solar Power Plants depends on the irradiance prevalent in the area where the Solar Power plant is located and the cost of land; and consequently, the impugned order may necessitate interference.

What is of relevance at the present stage, when the IA filed by the Appellant seeking interim relief is under consideration, is the fact that bids have been invited for a total of 140,300 pump sets for which LoAs/conditional LoAs have already been issued, and execution of the respective PPAs is underway.

It is also not in dispute that no bids have been invited with respect to the 15 locations for which the Appellant had submitted its bid. The interim relief sought by them is for the nodal agency to be injuncted from undertaking the exercise of re-tendering these 15 locations where the Appellant was found to be the L-1 bidder. As no such exercise of re-tendering has been undertaken by the nodal agency till date, the Appellant's apprehension of the possibility of the re-tendering process being undertaken with respect to these 15 locations is, as at present, unfounded. It is wholly unnecessary for us, therefore, to pass an interim order of injunction in this regard. With a view to protect the interest of the Appellant we grant them liberty, in case the nodal agency were to commence the re-tendering exercise for these 15 locations, to move this Tribunal by way of a fresh IA. Suffice it, while disposing of the IA, to also make it clear that the works, awarded under the subject tendering process, in so far as the 15 locations where the Appellant was L-1 is concerned, shall be subject to the result of the main appeal. The IA is disposed of accordingly.

APL No. 230 OF 2025

Registry to verify whether the pleadings are complete. If the pleadings are complete, let the appeal be included in the ‘List of Finals’ to be taken up from there in its turn.

Ajay Talegaonkar
Technical Member (Electricity)

Justice Ramesh Ranganathan
Chairperson

sk/mkj